

CHAIRMAN LYNN M. BRAGG
STATEMENT OF VIEWS ON UNTIMELY FILINGS:
SORBITOL FROM FRANCE, INV. NO. 731-TA-44 (REVIEW)
ANHYDROUS SODIUM METASILICATE FROM FRANCE, INV. NO. 731-TA-25 (REVIEW)

The instant reviews present an opportunity to comment upon what has become a repeated occurrence in the short history of sunset reviews before the Commission; namely, the late filing of both entries of appearance and responses to the notice of institution. Untimely responses to the Commission's notice of institution are of particular concern, because a rejected response is treated as a non-response for purposes of the sunset review.

In accordance with Commission regulations and established Commission practice, the decision to accept or reject a late filing is left to the Chairman's discretion. As amended, 19 C.F.R. § 201.14(b)(2) designates the Chairman, or such other person as is designated to conduct an investigation, to determine whether good cause has been shown justifying an extension of time within which to perform any act required by the rules, such as the filing of a response to a Commission notice of institution of a sunset review. With regard to late filings of entries of appearance, 19 C.F.R. § 201.11(c) also provides that the late filing shall be referred to the Chairman, or other person designated to conduct the investigation, who shall promptly determine whether good cause has been shown to accept the late filing.

Statutory and regulatory deadlines are integral to the Commission's function; this is particularly so in the conduct of sunset reviews, with many important deadlines measured in days, not weeks or months. In discussing the criteria for good cause, the U.S. Court of Appeals for the Federal Circuit has considered that a petitioner must show "that the delay was excusable under the circumstances where diligence or ordinary prudence ha[s] been exercised." Phillips v. United States Postal Service, 695 F.2d 1389, 1391 (Fed. Cir. 1982). In the context of sunset reviews, diligence and ordinary prudence begin with complete familiarity with applicable Commission regulations, and encompass a requirement that parties and their counsel allow for reasonably foreseeable circumstances which may impede the filing process, particularly when a filing is attempted at the eleventh hour. Consequently, in my view, the acceptance of a late filing in a sunset review should be considered extraordinary relief warranted solely when reasonably unforeseeable circumstances unexpectedly frustrate the exercise of professional diligence in assuring the timely filing of a submission.

I note that the history of Commission rulemaking for sunset reviews supports strict adherence to the deadline for responding to a notice of institution in all but extraordinary circumstances. In the Commission's proposed sunset regulations, parties were afforded thirty days within which to submit a response to the notice of institution. In response to both public comments and the sunset procedures adopted by Commerce, the Commission in its final regulations extended this period by providing fifty days within which to submit a response. The Commission also substantially reduced the amount of information to be requested in a notice of institution.

In adopting these changes, the Commission stated that "a 50-day deadline will provide ample time for interested parties to compile information and prepare responses to the notice of institution." 63 Fed. Reg. at 30,601. The Commission also stated that it "minimized the amount of empirical data requested in the notice of institution to reduce both the burdens imposed on interested parties at the outset of a review and the likelihood that interested parties will need to respond to duplicative information requests should there be a full review." Id.

Thus, the Commission has shown itself sensitive to the burdens imposed on parties that wish to respond to a notice of institution by both extending the period for response and by reducing the magnitude of the information request; concomitantly, parties must recognize the imperative need to adhere to administrative deadlines which are essential to the efficient conduct of sunset reviews.